

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25250)
EDWARD AND SYLVIA COLBURN)
Applicants)
NEVADA IRRIGATION DISTRICT AND)
SOUTH SUTTER WATER DISTRICT)
Protestants)

Decision: 1530
Source: Dry Creek
County: Placer

DECISION DENYING APPLICATION 25250

BY THE BOARD:

Edward and Sylvia Colburn having filed Application 25250 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the Board having considered all available information finds as follows:

Substance of the Application

1. Application 25250 is for a permit to appropriate 0.38 cubic foot per second (cfs) by direct diversion from Dry Creek tributary to Coon Creek thence East Side Canal. The water is to be diverted from April 15 to June 30 and September 1 to November 15 for irrigation. The point of diversion is within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 18, T13N, R8E, MDB&M.

Applicants' Project

2. The applicants propose to divert water to irrigate 30 acres of pasture. The water sought is effluent discharged by the Rock Creek Wastewater Treatment Plant and considered by the applicants to be abandoned water available for appropriation. The applicants plan to purchase water from the Nevada Irrigation District during July and August.

Protests

3. Nevada Irrigation District (NID) protested the application on the basis of prior rights. NID asserts that there is no unappropriated water in Dry Creek during the irrigation season and that water discharged by the wastewater treatment plant can be rightfully claimed by NID. It maintains that it is within its rights under Section 22078 of the Water Code to recapture and salvage any water within its system for the beneficial use of the district. The wastewater originates from the north end of Auburn, and NID supplies domestic water to 90 percent of that service area.

4. South Sutter Water District (SSWD) protested the application on the basis of prior Application 24621. Under that filing SSWD proposes to divert 20 cfs from Coon Creek and Ping Slough in Sutter County for irrigation from April 1 to June 30 and October 1 to October 31. SSWD claims that approval of Application 25250 will reduce the available supply in Coon Creek and cause a shortage in its service area. All protests against Application 24621 have been resolved, but the Board has not acted on the application. Protestant SSWD also holds permitted Application 22102 on Coon Creek. This permitted application authorizes the diversion of 50 cfs from September to June 15. Application 22102 was filed on April 12, 1965.

Availability of Unappropriated Water

5. Board Decisions D 909 and D 977, which were both adopted in 1960, found that there is no water available for appropriation in Dry Creek from about mid-April to about mid-October. However, the applicants contend that the Rock Creek Wastewater Treatment Plant started operating after 1960 and the wastewater is abandoned "new" water available for appropriation.

6. The Board concluded in Decision D 977 that protestant NID possessed a pre-1914 appropriative right to divert the entire flow of Dry Creek into its Camp Far West Ditch. The addition of foreign water to a stream system accrues to the benefit of appropriative rights on said stream system. E. Clemens Horst Co. v. New Blue Point Mining Co., 177 Cal. 631, 171 P. 417 (1918) While such an addition does not increase the maximum quantity of the right, it does make the right more reliable in drier years. Even if the entire discharge from the sewage treatment plant is in excess of the rights of Protestant NID^{*/}, the foreign water added by the sewage treatment plant must satisfy other prior appropriative rights of protestant SSWD, including Application 22102. Since the date of filing of Application 22102 is subsequent to the addition of sewage to Dry Creek, the sewage was a source for said application. Accordingly the Board concludes that the abandoned foreign water was appropriated by protestant SSWD by an application filed in 1965 and that there is no unappropriated water available to supply the applicant.

Record in This Matter

7. The records, documents, and other data used in determining this matter are: Files of Applications 18752, 24621 and 25250 and Decisions D 909, D 977, D 990, D 1043 and D 1383.

Conclusions

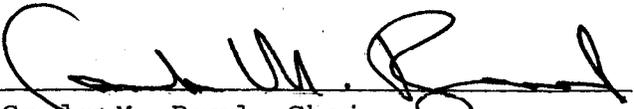
8. From the foregoing findings, the Board concludes that Application 25250 should be denied.

^{*/} Protestant NID's allegation that it has a right to recapture water from Dry Creek which it originally supplied to users of the sewage treatment plant need not be discussed because of the conclusions expressed herein. The Board expresses no opinion about whether NID has the right to divert the sewage flow on this alternative ground.

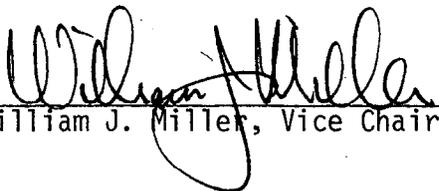
ORDER

IT IS HEREBY ORDERED that Application 25250 be denied.

Dated: **SEP 20 1979**



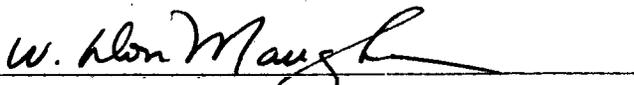
Carla M. Bard, Chairwoman



William J. Miller, Vice Chairman

ABSENT

L. L. Mitchell, Member



W. Don Maughan, Member